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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,335	12/28/2001	Charles Morell	KCC-14,977	8352
35844	7590	09/17/2004		
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			EXAMINER THOMPSON, CAMIE S	
			ART UNIT 1774	PAPER NUMBER

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

S.C.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/034,335	MORELL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Camie S Thompson	1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 June 2004.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-15 and 25 is/are allowed.
- 6) Claim(s) 26 is/are rejected.
- 7) Claim(s) 16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date rec'd 5/13/04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Applicant's amendment and accompanying remarks filed June 25, 2004 have been acknowledged.
2. The rejection of claims 1-16 and 25 under 35 U.S.C. 102(b) as being anticipated by WO0037723 is withdrawn due to applicant's argument.
3. Claim 16 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 2. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by WO0037723.

The European reference discloses multicomponent fine fiber webs and multilayer laminates (see abstract). The figures in the reference disclose a first facing web; a second facing web and a plurality of thermoplastic elastomeric fibers located between the first facing web and the second facing web. Claim 26 is a product-by-process claim. Even though product-by-process claims are limited and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product

in the product-by-process claim is the same as or obvious from a product of the prior art, the claims is unpatentable even though the prior art was made by different process. Instant claim 26 and the reference both disclose a disposable garment comprising first and second facing webs with a plurality of thermoplastic fibers located between the first and second facing webs. The manner in which the disposable garment is made does not make it different product. Therefore, the disposable garment of the instant invention is the same as the disposable garment in the European reference.

6. Claims 1-15 and 25 are allowed. The prior art does not provide for an elastic laminate, comprising:

- a) a first facing web;
- b) a second facing web;
- c) a plurality of thermoplastic elastomeric fiber strands located between the first facing web and the second facing web; and
- d) the fiber strands having an elastic core and adhesive surfaces and bonding the first facing web and the second facing web together contact adhesion with the adhesive surfaces of the fibers to create the elastic laminate.

#### ***Response to Arguments***

7. Applicant's arguments filed June 25, 2004 have been fully considered but they are not persuasive. Applicant argues that the European reference does not teach or suggest the present invention. Instant claim 26 is a product claim with process limitations. The process limitations

are not given any patentable weight. Both the European reference and the instant invention comprise first and second facing webs with a plurality of thermoplastic fiber located therebetween. The manner in which the fibers are process are not given any patentable weight. The compression of the laminate is not given any patentable weight. The rejection of instant claim 26 is maintained.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L Dye, can be reached at (571) 272-3186. The fax phone number for the Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RENA DYE  
SUPERVISORY PATENT EXAMINER  
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